

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LUIS JIMENEZ	:	SMALL CLAIMS DETERMINATION DTA NO. 820115
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 2000.	:	

Petitioner, Luis Jimenez, 353 South 3rd Street, Apt. 25, Brooklyn, New York 10021, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 2000.

A small claims hearing was held before Thomas C. Sacca, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on September 13, 2005 at 1:15 P.M., with all documentation to be submitted by March 13, 2006, which date began the three-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Susan Parker).

ISSUE

Whether petitioner is entitled to the earned income credit for the year 2000.

FINDINGS OF FACT

1. Petitioner, Luis Jimenez, timely filed his New York State Resident Income Tax Return, Form IT-201, for the year 2000. He claimed "Head of Household" filing status, with the standard deduction and two dependent exemptions. The return indicated a refund of \$1,039.00,

which consisted of an earned income credit of \$874.00, school tax credit of \$45.00 and withholding tax of \$120.00.

2. The Division of Taxation (“Division”) was advised by the Internal Revenue Service (“IRS”) that following an audit of the tax years 2000 and 2001, petitioner’s claimed earned income credit and two dependent exemptions had been disallowed for both years, and his filing status changed to “single” from “head of household.” A refund that was due petitioner for the year 2001 was used by the IRS to satisfy the deficiency which resulted for the year 2000 following the audit. As a result of receiving this information and making the corresponding adjustments, the Division issued a Statement of Proposed Audit Changes, dated March 24, 2003, advising petitioner that, based upon the IRS information, two exemptions and the earned income credit claimed for the year 2000 had been disallowed. The statement further advised that petitioner would be assessed \$874.00, the amount of the earned income credit claimed for the year 2000.

3. On May 19, 2003, the Division issued to petitioner Notice of Deficiency L-022105821-4, which assessed tax due of \$874.00, plus interest.

4. Following a reaudit of the years 2000 and 2001, the IRS reinstated the two exemptions petitioner had claimed for the year 2000, but did not allow the claimed earned income credit for such year. For the year 2001, petitioner was allowed the claimed exemptions and the earned income credit. As a result of the recomputation, petitioner was entitled to a refund for the year 2001. The refund was applied to the remaining deficiency which existed for the year 2000, and the balance was sent to petitioner.

CONCLUSIONS OF LAW

A. As applicable to this proceeding, Tax Law § 606(d) provides that the New York State earned income credit for the 2000 tax year is equal to 22½ percent “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . .” Since the State earned income credit is determined based solely on a percentage of the Federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code (“IRC”) and Federal case law to determine petitioner’s eligibility for the earned income credit.

B. The Federal earned income credit, provided for pursuant to IRC § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on a determination of a taxpayer’s “earned income” which includes, *inter alia*, wage income and earnings from self-employment (IRC § 32[c][2]). In order to be eligible for the earned income credit, the eligible individual must have a qualifying child for the taxable year. A qualifying child is one which meets the statutory requirements of age, relationship and residency (IRC § 32[c][3]).

C. The IRS, following an audit, denied petitioner’s claimed earned income credit for the year 2000. As New York State’s earned income credit is based upon the amount allowed for Federal purposes, it must follow that petitioner is not entitled to, and the Division correctly disallowed, the earned income credit claimed for New York State purposes for the tax year 2000.

D. Petitioner was under the mistaken belief that because he received a refund from the Internal Revenue Service following the reaudit of the years 2000 and 2001, the IRS had granted him the earned income credit for the year 2000. However, the record is clear that the overpayment was the result of the recomputation of the years 2000 and 2001, when the IRS granted petitioner the earned income credit for the year 2001, applied it to the remaining deficiency that existed for the year 2000, and then issued a refund for the balance. The

information obtained by the Division from the IRS makes clear that the earned income credit claimed for the year 2000 was originally disallowed by the IRS and never reinstated.

E. The petition of Luis Jimenez is denied, and the Notice of Deficiency dated May 19, 2003 is sustained.

DATED: Troy, New York
March 30, 2006

/s/ Thomas C. Sacca
PRESIDING OFFICER